



Ohio Revised Code

Section 3772.04 Adjudications; hearings; orders.

Effective: June 11, 2012

Legislation: House Bill 386 - 129th General Assembly

(A)(1) If the commission concludes that a license required by this chapter should be limited, conditioned, restricted, suspended, revoked, denied, or not renewed, the commission may, and if so requested by a licensee or applicant, shall, conduct a hearing in an adjudication under Chapter 119. of the Revised Code. After notice and opportunity for a hearing, the commission may limit, condition, restrict, suspend, revoke, deny, or not renew a license under rules adopted by the commission. The commission may reopen a licensing adjudication at any time.

(2) The commission shall appoint a hearing examiner to conduct the hearing in the adjudication. A party to the adjudication may file written objections to the hearing examiner's report and recommendations not later than the thirtieth day after they are served upon the party or the party's attorney or other representative of record. The commission shall not take up the hearing examiner's report and recommendations earlier than the thirtieth day after the hearing examiner's report and recommendations were submitted to the commission.

(3) If the commission finds that a person fails or has failed to meet any requirement under this chapter or a rule adopted thereunder, or violates or has violated this chapter or a rule adopted thereunder, the commission may issue an order:

(a) Limiting, conditioning, restricting, suspending, revoking, denying, or not renewing, a license issued under this chapter;

(b) Requiring a casino facility to exclude a licensee from the casino facility or requiring a casino facility not to pay to the licensee any remuneration for services or any share of profits, income, or accruals on the licensee's investment in the casino facility; or

(c) Fining a licensee or other person according to the penalties adopted by the commission.

(4) An order may be judicially reviewed under section 119.12 of the Revised Code.



(B) Without in any manner limiting the authority of the commission to impose the level and type of discipline the commission considers appropriate, the commission may take into consideration the following:

(1) If the licensee knew or reasonably should have known that the action complained of was a violation of any law, rule, or condition on the licensee's license;

(2) If the licensee has previously been disciplined by the commission;

(3) If the licensee has previously been subject to discipline by the commission concerning the violation of any law, rule, or condition of the licensee's license;

(4) If the licensee reasonably relied upon professional advice from a lawyer, doctor, accountant, or other recognized professional that was relevant to the action resulting in the violation;

(5) If the licensee or the licensee's employer had a reasonably constituted and functioning compliance program;

(6) If the imposition of a condition requiring the licensee to establish and implement a written self-enforcement and compliance program would assist in ensuring the licensee's future compliance with all statutes, rules, and conditions of the license;

(7) If the licensee realized a pecuniary gain from the violation;

(8) If the amount of any fine or other penalty imposed would result in disgorgement of any gains unlawfully realized by the licensee;

(9) If the violation was caused by an officer or employee of the licensee, the level of authority of the individual who caused the violation;

(10) If the individual who caused the violation acted within the scope of the individual's authority as granted by the licensee;



- (11) The adequacy of any training programs offered by the licensee or the licensee's employer that were relevant to the activity that resulted in the violation;
- (12) If the licensee's action substantially deviated from industry standards and customs;
- (13) The extent to which the licensee cooperated with the commission during the investigation of the violation;
- (14) If the licensee has initiated remedial measures to prevent similar violations;
- (15) The magnitude of penalties imposed on other licensees for similar violations;
- (16) The proportionality of the penalty in relation to the misconduct;
- (17) The extent to which the amount of any fine imposed would punish the licensee for the conduct and deter future violations;
- (18) Any mitigating factors offered by the licensee; and
- (19) Any other factors the commission considers relevant.

(C) For the purpose of conducting any study or investigation, the commission may direct that public hearings be held at a time and place, prescribed by the commission, in accordance with section 121.22 of the Revised Code. The commission shall give notice of all public hearings in such manner as will give actual notice to all interested parties.

(D)(1) For the purpose of conducting the hearing in an adjudication under division (A) of this section, or in the discharge of any duties imposed by this chapter, the commission may require that testimony be given under oath and administer such oath, issue subpoenas compelling the attendance of witnesses and the production of any papers, books, and accounts, directed to the sheriffs of the counties where such witnesses or papers, books, and accounts are found and cause the deposition of any witness. The subpoenas shall be served and returned in the same manner as subpoenas in



criminal cases are served and returned. The fees of sheriffs shall be the same as those allowed by the court of common pleas in criminal cases.

(2) In the event of the refusal of any person without good cause to comply with the terms of a subpoena issued by the commission or refusal to testify on matters about which the person may lawfully be questioned, the prosecuting attorney of the county in which such person resides, upon the petition of the commission, may bring a proceeding for contempt against such person in the court of common pleas of that county.

(3) Witnesses shall be paid the fees and mileage provided for in section 119.094 of the Revised Code.

(4) All fees and mileage expenses incurred at the request of a party shall be paid in advance by the party.

(E) When conducting a public hearing, the commission shall not limit the number of speakers who may testify. However, the commission may set reasonable time limits on the length of an individual's testimony or the total amount of time allotted to proponents and opponents of an issue before the commission.

(F) The commission may rely, in whole or in part, upon investigations, conclusions, or findings of other casino gaming commissions or other government regulatory bodies in connection with licensing, investigations, or other matters relating to an applicant or licensee under this chapter.

(G) Notwithstanding anything to the contrary in this chapter, and except with respect to a casino operator, management company, or holding company, the executive director may issue an emergency order for the suspension, limitation, or conditioning of any license, registration, approval, or certificate issued, approved, granted, or otherwise authorized by the commission under Chapter 3772. of the Revised Code or the rules adopted thereunder, requiring the inclusion of persons on the commission's exclusion list provided for under section 3772.031 of the Revised Code and the rules adopted thereunder, and requiring a casino facility not to pay a licensee, registrant, or approved or certified person any remuneration for services or any share of profits, income, or accruals on that person's investment in the casino facility.



- (1) An emergency order may be issued when the executive director finds either of the following:
 - (a) A licensee, registrant, or approved or certified person has been charged with a violation of any of the criminal laws of this state, another state, or the federal government;
 - (b) Such an action is necessary to prevent a violation of this chapter or a rule adopted thereunder.
- (2) An emergency order issued under division (G) of this section shall state the reasons for the commission's action, cite the law or rule directly involved, and state that the party will be afforded a hearing if the party requests it within thirty days after the time of mailing or personal delivery of the order.
- (3)(a) Not later than the next business day after the issuance of the emergency order, the order shall be sent by registered or certified mail, return receipt requested, to the party at the party's last known mailing address appearing in the commission's records or personally delivered at any time to the party by an employee or agent of the commission.
 - (b) A copy of the order shall be mailed to the attorney or other representative of record representing the party.
 - (c) If the order sent by registered or certified mail is returned because the party fails to claim the order, the commission shall send the order by ordinary mail to the party at the party's last known address and shall obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the order is returned showing failure of delivery.
 - (d) If the order sent by registered, certified, or ordinary mail is returned for failure of delivery, the commission shall either make personal delivery of the order by an employee or agent of the commission or cause a summary of the substantive provisions of the order to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known address of the party is located.
 - (i) Failure of delivery occurs only when a mailed order is returned by the postal authorities marked



undeliverable, address or addressee unknown, or forwarding address unknown or expired.

(ii) When service is completed by publication, a proof of publication affidavit, with the first publication of the summary set forth in the affidavit, shall be mailed by ordinary mail to the party at the party's last known address and the order shall be deemed received as of the date of the last publication.

(e) Refusal of delivery of the order sent by mail or personally delivered to the party is not failure of delivery and service is deemed to be complete.

(4) The emergency order shall be effective immediately upon service of the order on the party. The emergency order shall remain effective until further order of the executive director or the commission.

(5) The commission may, and if so requested by the person affected by the emergency order shall, promptly conduct a hearing in an adjudication under Chapter 119. of the Revised Code.